U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 21 2006

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mary Gleason

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a medical researcher at Washington University School of Medicine. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> [The petitioner] has been successfully engaged in original pediatric medical imaging research to increase understanding [of] brain development in normal children, as well as the impact of disease on brain function in children. . . .
>
> Through his research, [the petitioner] has made valuable contributions to the understanding of the impact of the brain function in children suffering from sickle cell anemia and phenylketonuria of those diseases [*sic*]. He is also a critical participant in The MRI Study of Normal Brain Development. . . . [The petitioner's] development of new pediatric medical imaging techniques has allowed this project to move toward achievement of its goals much more effectively than was thought possible when it began. No one else in the country or world has had the level of success that he has attained.

The petitioner's initial submission consists almost entirely of witness letters. A number of these witnesses are Washington University faculty members. For example, [redacted] an Assistant Professor at Washington University School of Medicine, states:

> I chair the steering committee of The MRI Study Of Normal Brain Development conducted by the Brain Development Cooperative Group. To our knowledge, this is the most comprehensive and rigorous MRI study of pediatric brain and behavioral development ever conducted. . . .

> [The petitioner] has been working on the Brain Development project since early 2002. I hired him to run the pediatric imaging aspects of the Brain Development project because of his unique expertise in the scanning of young children without sedation. . . . [The petitioner] has been instrumental in assuring the success of the project. Clearly, the work he is doing is in the national interest of the United States, as we seek to establish normative data for the brain development and maturation of a sample of children representative of the US population. This database will serve as the standard for normal brain development by which investigators and clinicians can assess a child's brain development. Currently, there is no such standard which pediatric clinicians can use as a starting point for diagnosis and treatment of abnormal brain development. . . .
>
> [The petitioner's] expertise scanning children without sedation, more than any other factor, has assured the success of the project. There is no one else in the world with a track record of success in scanning young children without sedation like his. . . .
>
> Without him, we will not be able to achieve the stated goals of The MRI Study of Normal Brain Development.

[redacted], an Associate Professor at Harvard University, identifies himself as "a co-investigator for an ongoing clinical trial, 'The MRI Study of Normal Brain Development.'" He states that the petitioner's "participation is critical to this ongoing clinical trial. He is the anchor person at Washington University Objective-2 imaging center. . . . His success rate in the acquisition of imaging non-sedated kids is far greater than any other person, nationally as well as internationally."

[redacted] of University College London, United Kingdom, states:

> [The petitioner] and I know one another through our co-investigations with the Silent Infarct Infusion Trial, a study being conducted in four countries to examine the utility of transfusion therapy in preventing strokes and cognitive decline in children with sickle cell disease. I oversee the data collection taking place at hospitals in Great Britain. . . .
>
> Particularly impressive is his development of techniques to obtain neuroimaging data from young children and babies without the need to sedate them. Avoiding sedation for these types of procedures is a major medical advance that is unique to [the petitioner].

Several others who have collaborated with the petitioner, at Washington University and elsewhere, assert that the petitioner's participation – specifically, his ability to scan young children without sedation – is essential to the project described above and to other studies that require brain scan imaging. All of the witnesses have collaborated with the petitioner to some extent.

On June 24, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit additional documentation to meet the guidelines set forth in *Matter of New York State Dept. of*

Transportation. The director specifically requested "evidence, from individuals outside [the petitioner's] prior and immediate circle of colleagues and acquaintances," as well as documentation to establish that the petitioner's work has had an especially significant impact on his field. The RFE contained no specific discussion of the petitioner's claims or evidence, instead setting forth various general requirements.

In response, counsel cites a memorandum from William R. Yates, Associate Director of Operations, *Requests for Evidence (RFE) and Notice of Intent to Deny (NOID)* (February 16, 2005), highlighting this passage:

> "Broad brush" RFEs tend to generate "broad brush" responses. . . . While it is sensible to use well articulated templates that set out an array of common components of RFEs for a particular case type, it is not normally appropriate to "dump" the entire template in a RFE; instead, the record must be examined for what is missing, and a limited, specific RFE should be sent, using the relevant portion from the template. The RFE should set forth what is required in a comprehensible manner so that the filer is sufficiently informed of what is required.

Counsel states: "the RFE failed to specifically address the evidence which was initially submitted with the Petition." Counsel quotes from several of the previously submitted letters, and asserts that the witnesses "have already identified [the petitioner] as possessing unique abilities that enable him to contribute to such research in a manner far superior to that of others in the field." Counsel further contends that labor certification is not a realistic option because the petitioner himself "developed the techniques that are critical to this research," a claim for which counsel cites no specific source.

The director denied the petition on December 6, 2005. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner failed to "establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

On appeal, counsel asserts that the director's decision "fails to give proper weight and understanding to the support statements of experts who have worked with" the petitioner. Counsel also observes that a witness letter is not discredited simply because the witness has collaborated with the petitioner.

There are times when a petition relies largely or entirely on witness letters from collaborators because the alien's work has received so little recognition, and had so little impact, that the alien's own collaborators are the only ones with any detailed knowledge of the alien's work. There are, however, other occasions when an alien has worked with a broad array of collaborators for the very reason that his skills and abilities place the alien in demand in major projects. The latter seems to be the case here. While many of the witnesses are at Washington University, the record does not indicate that the petitioner's reputation is wholly or largely confined to Washington University. Rather, witnesses from throughout the United States, and even one witness from as far away as London, all attest that the petitioner has not merely learned difficult skills, but that he himself has developed critical techniques upon which rest the success of a major research initiative involving universities and research facilities around the United States. The available evidence supports the

conclusion that, beyond simply being a highly trained worker in his field, the petitioner is an innovative and influential researcher who has affected the course of continuing research in his area of expertise and related fields.

We concur with counsel that the director's RFE was so broad that it afforded the petitioner little guidance as to how to prepare a constructive response. The denial notice was less generic, but still it contained minimal discussion of the details of the petitioner's work, resting largely on what appears to be "stock" language. The denial, as a result, amounted in large part to a series of conclusions with few supporting premises.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the medical research community recognizes the significance of this petitioner's work rather than simply the specialty in general. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.